

**Editor's note: Overruled to the extent inconsistent with Harvey A. Clifton 60 IBLA 29 (Nov. 16, 1981)**

CHARLES AND PETE CARESS

IBLA 79-342

Decided June 29, 1979

Appeal from decision of the Oregon State Office Bureau of Land Management, declaring mining claims abandoned and void. OR MC 0815 and 0816.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Mining Claims: Abandonment -- Mining Claims: Assessment Work

Where the owner of an unpatented mining claim located prior to Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 31 of the calendar year following the calendar year in which he recorded the claim in the BLM office, his claim is properly deemed conclusively to have been abandoned.

2. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Charles and Pete Caress, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated March 23, 1979, of the Oregon State Office, Bureau of Land Management (BLM), holding mining claims OR MC 0815 and 0816 void for failure to file assessment statements or notices of intention to hold the claims as required by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), hereinafter FLPMA.

The claims involved in this appeal were located on October 1 and 15, 1976. The decision appealed from states that no assessment statement (proof of labor) or notice of intention to hold the claims was received by BLM prior to December 31, 1978, as required by section 314 of FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The file contains photocopies of notices of location of placer claims indicating that such notices were filed pursuant to Oregon State law with the County Recorder, County of Malheur, in November 1976. These documents are date stamped "July 5, 10:00 AM '77" by Oregon State Office.

On September 1, 1978, appellants filed with the County Recorder, Malheur County, proofs of labor describing work performed on the claims. Appellants submitted copies of these documents to BLM together with their letter of appeal. All of these documents are date stamped April 2, 1979. Appellants state in their letter of appeal that they were unaware of the filing requirements.

The first sentence of section 314(a) (FLPMA) states:

(a) The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. . . .

The applicable regulation, 43 CFR 3833.2-1(a)(1), states:

The owner of an unpatented mining claim located on Federal land, excluding land within units of the National Park System, on or before October 21, 1976, shall file before October 22, 1979, and prior to December 31 of each calendar year following the calendar year of recording in the proper BLM office pursuant to this subpart evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

[1] Section 314(a) of FLPMA and the above regulation initially allow 3 years for the filing of the required documents where the claim is located on or before October 21, 1976. However, where, as here, a mining claimant has recorded his claim with the BLM office,

43 CFR 3833.2-1(a)(1) clearly requires 1/ evidence of annual assessment work, or a notice of intention to hold to be filed in the year following the year of recording. Appellants recorded their claims with BLM in 1977; they were therefore required to file one or the other of the above documents by December 31, 1978. Since they failed to file, their claims were properly deemed conclusively to have been abandoned. See Paul S. Coupey, 35 IBLA 112 (1978).

[2] It is of no avail to appellants to point out that they were not aware of the regulatory requirements. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. § 1507, 1510 (1970); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Douglas B. Henriques  
Administrative Judge

Newton Frishberg  
Chief Administrative Judge

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1/ While the statute, section 314(a) of FLPMA is amenable to a possible construction that appellant was not required to file proof of assessment work until December 31, 1980, the Department's contrary construction of the statute as evidenced by the regulation, is binding upon this Board.

